

Tom B. Bacon

From: Aba Heiman [AHeiman@fbrlaw.com]
Sent: Thursday, May 10, 2007 8:59 AM
To: Tom B. Bacon
Subject: RE: [BULK] Prel Plaza

Dear Tom:

I reviewed your papers and slept on it. Although the Stipulation is carefully drafted to avoid any admission that me and my brother own Prel Plaza, I'm uncomfortable stipulating to allow any Amended Complaint that names us as defendants. As it appears you have now found the proper party defendant, I should think a call to Ulster Heights Properties, Inc. will confirm that neither me nor my brother are owners of Prel Plaza, nor of any of the places of public accommodation within Prel Plaza. As we e-filed the Answer on 5/7/07, under Fed.R.Civ.Proc. 15(a), you have at least until 5/27/07 to amend the Complaint without leave of court or consent of adverse parties. Finally, while leave to amend may be freely given, leave should be denied where the amendment would be futile, *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962), and it would be futile as to me and my brother.

Incidentally, as shown in our Answer, I'm not handling this matter through the firm where I'm employed, but (thus far) as a pro se individual and as counsel for my brother.

Aba Heiman, Esq.

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-----Original Message-----

From: Tom B. Bacon [mailto:tbb@fullerfuller.com]
Sent: Wednesday, May 09, 2007 12:55 PM
To: Aba Heiman
Subject: [BULK] Prel Plaza
Importance: Low

Dear Aba:

Attached hereto please find the Amended Complaint I propose to file. I have also attached a Stipulation for leave to file which I must have your approval and signature. Once the new defendant is served, and we further confirm that you are not the proper owners, we will dismiss the action against you. Please let me know if we can sign the stipulation on your behalf for filing.

Thank you for your attention and call me if you have any questions.

Thomas B. Bacon, Esquire
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Facsimile: (305) 893-9505

5/10/2007

